ITT Lighting Fixtures, Division of ITT Corporation *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW. Case 26-CA-8050

December 16, 1982

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On September 26, 1980, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding,[1] in which it found that by refusing to bargain with the Union, certified by the Board in Case 26-RC-5908 on May 9, 1980,[2] Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended. The Board ordered Respondent to cease and desist from its unlawful conduct, and to recognize and bargain with the Union. Subsequently, Respondent filed with the United States Court of Appeals for the Second Circuit a petition for review of the Board's Order, and the General Counsel filed a cross-petition for enforcement.

In an opinion dated September 1, 1981,[3] the court denied enforcement of the Board's Order and remanded the case to the Board for further proceedings and action in light of the court's opinion. Thereafter, Respondent and the Union filed statements of position, and Respondent filed an answering brief.[4]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

We have carefully reviewed the entire record in the underlying representation proceeding, as well as the statements of position, and, for the reasons discussed below, we have decided to reaffirm our Certification of Representative issued in Case 26-RC-5908 and our previous Order in this proceeding.[5]

Respondent refuses to bargain with the Union on the ground that the Union was improperly certified inasmuch as the activities of Respondent's group leaders on behalf of the Union interfered with employees' free choice in the election. In this regard, Respondent contends that the group leaders are supervisors within the meaning of the Act and, as such, their open and pervasive involvement in the Union's campaign necessarily would have coerced employees into supporting the Union.

In the underlying representation proceeding, a Hearing Officer found that the group leaders were statutory supervisors, and he recommended that Respondent's challenges to 31 group leaders' ballots be sustained. The Hearing Officer concluded, nevertheless, that the group leaders were "minor" supervisors without the authority, in the interest of Respondent, to hire, fire, suspend, lay off, recall, promote, discharge, reward, or discipline employees on their own volition. Further, the Hearing Officer recommended that Respondent's objections be overruled, finding that "the prounion activities of group leaders did not impair the employees' freedom of choice in the election, or constitute interference which would warrant setting aside the election." Accordingly, the Hearing Officer recommended that the Union be certified.

Thereafter, the Regional Director issued his Supplemental Decision and Certification of Representative. Contrary to the Hearing Officer, he found that the evidence was sufficient to establish the supervisory status of only 11 of the group leaders, and that the record was either insufficient or contradictory with respect to the status of the other 20 group leaders. The Regional Director, however, decided that he need not resolve the challenges to the ballots of those 20 remaining group leaders, since they would not be determinative of the election result.

The Regional Director adopted the Hearing Officer's findings that the group leaders' union activities did not constitute objectionable conduct. In so doing, he stated that "assuming *arguendo* that the group leaders involved in union activity were supervisors, they were 'minor' as opposed to 'major' supervisors with no real opportunity to affect the employment status of other employees."

Subsequently, the Board granted Respondent's request for review of the Regional Director's supplemental decision only with respect to whether the 20 remaining group leaders were supervisors for the purpose of resolving the challenges to their ballots. Review was denied as to the Regional Director's overruling of Respondent's objections. In its Decision on Review,[6] the Board agreed with

[1] 252 NLRB 328.
[2] 249 NLRB 441.
[3] 658 F.2d 934.
[4] We hereby deny Respondent's motion for oral argument and its motion that the Board strike the Union's statement of position.
[5] On February 19, 1982, the Board directed that the record in this case be reopened and that a hearing be held before an administrative law judge for the purpose of taking evidence and making findings of fact on issues raised by Respondent's objections to the election held in Case 26-RC-5908. Subsequently, on April 7, 1982, the Board granted Respondent's motion for reconsideration, and rescinded the Order reopening the record. Neither Order was published in bound volumes of Board Decisions.
[6] 249 NLRB 441.

the Regional Director that 11 of the group leaders were supervisors, but also found sufficient uncontradicted evidence to establish the supervisory status of 4 additional group leaders. Inasmuch as the challenged ballots of the 16 remaining group leaders were not determinative—the Union having received a 22-vote majority of the ballots counted—the Board left unresolved their supervisory status. As mentioned above, the Board subsequently found that Respondent's refusal to bargain with the Union violated Section 8(a)(5) and (1) of the Act.[7]

In refusing to enforce the Board's bargaining order, the court of appeals remanded the case for further findings on the supervisory authority of the group leaders and whether their "pro-union activity could effectively affect the votes of employees." The court stated that such findings were necessary because the Regional Director failed to provide any "analysis as to the difference between 'major' and 'minor' supervisors," and did not "explain what factors he takes into consideration in arriving at this distinction."

As the court acknowledged, it is well settled that an election is not *per se* invalid merely because there was some prounion activity on the part of a supervisor. Instead, there must be a showing that the supervisor's conduct reasonably tended to have such a coercive effect on employees that it was likely to impair their freedom of choice in the election.[8] Prounion supervisory conduct may reasonably tend to coerce employees even where, as here, the supervisors have made no threats of retaliation. The court of appeals here pointed out that, in the absence of threats, determining whether prounion supervisory conduct was coercive requires examination of two factors: (1) the degree of supervisory authority, and (2) the extent, nature, and openness of the prounion activity. With respect to the former, we read the court's opinion as approving the distinction that the Board has made in prior cases between "major" and "minor" supervisory authority in assessing the coercive effect of supervisors' union activities. This distinction is based on the recognition that only those supervisors who can take or effectively recommend adverse action—i.e., major supervisors—possess the retaliatory potential sufficient to make their extensive involvement in a union campaign coercive upon employees.

We view it as the law of the case, and as the proper statement of the law, that a group leader is a major supervisor only if he possesses the authority to hire, fire, promote, or issue written warnings on his own volition, or has the authority effectively to recommend such action. Respondent admits, and the court found, that the group leaders have no authority, on their own volition, to hire, fire, suspend, lay off, recall, promote, reward, discipline, or issue written warnings. Consequently, the only indicia of major supervisory authority which any of the group leaders may possess—if they possess any—is the authority effectively to recommend hiring, firing, promotions, or written warnings.

The court stated that there is "voluminous testimony in the record, albeit at times conflicting, as to" the group leaders' authority effectively to recommend hiring, firing, promotions, or written warnings. We note, however, that said testimony pertains almost exclusively to group leaders who did not engage in union activity.[9]

Further, the "voluminous testimony" referred to by the court and relied on by Respondent must be viewed in light of the well-established principle that the authority effectively to recommend generally means that the recommended action is taken with *no* independent investigation by superiors, not simply that the recommendation ultimately is followed.[10]

The parties stipulated, and the record shows, that 16 of the 31 group leaders in question did not engage in any union activity.[11] Accordingly, their supervisory authority is irrelevant to our decision here, and we will focus only on the remaining 15 group leaders.[12] Respondent presented much testimony about the duties of group leaders, generally, in attempting to demonstrate that they all have essentially the same functions and responsibilities. Nevertheless, Respondent conceded that there are differences in both the amount of supervision under which particular group leaders work, and the authority they exercise over employees. Consequently, evidence relating specifically to individual

[7] 252 NLRB 328.

[8] See, e.g., *Turner's Express, Incorporated*, 189 NLRB 106 (1971); *Stevenson Equipment Company*, 174 NLRB 865 (1969).

[9] For example, testimony concerning written warnings issued in reliance on group leaders' recommendations involved group leaders Rebecca Hamilton, Richard Hayes, Bobby Hobbs, Robert Johnson, Jessie Merriweather, Jeannette Noe, and Gilbert Vickers. Only Merriweather engaged in union activity. In addition, evidence that group leaders have the authority effectively to recommend discharge, suspension, or layoff, involved group leaders Rebecca Hamilton, Robert Johnson, George McGhee, and Gilbert Vickers. Of this group, only McGhee engaged in union activity.

[10] See, e.g., *J. K. Electronics, Inc., d/b/a Wesco Electrical Company*, 232 NLRB 479 (1977); *Reliance Insurance Company and Planet Insurance Company d/b/a Reliance Insurance Companies*, 173 NLRB 985 (1968).

[11] Specifically, Carolyn Barnes, Ernest Bolen, Lonnie Edlin, Billie Hamilton, Rebecca Hamilton, Richard Hayes, Bobby Hobbs, Robert Johnson, Marie Mason, Jeannette Noe, Linda Sappington, Shirley Spencer, Gilbert Vickers, Thelma Warf, Dorothy Willard, and Mary Wright.

[12] These 15 are: Dewey Abbott, Christine Brown, Joan Carson, Jo Ann Gray, Terry Henley, Barbara Jackson, Richard Johnson, Vernal Massey, George McGhee, John McNeely, Jessie Merriweather, Jeannette Millington, Carolyn Smith, Barry Williams, and Sammie Williams.

group leaders will be accorded the most weight in reaching our determination. We now will consider the supervisory authority and union activity of each of the 15 group leaders.[13]

Dewey Abbott: Abbott was a group leader on the third shift, which consists of a small number of employees. No evidence regarding his supervisory authority was adduced at the hearing, and he is 1 of 16 group leaders (8 with union activities, and 8 without) whose supervisory status was left unresolved at the prior stages of this case. Accordingly, we find insufficient evidence to demonstrate that Abbott was a supervisor within the meaning of the Act. Therefore, his stipulated union activity—attending a union meeting on February 11, 1979—is immaterial to our decision.[14]

Christine Brown: Brown directed the work of 11 employees on an assembly line in the uniflux department. The Regional Director found Brown to be a statutory supervisory, relying on her responsibility to see that her line was run properly, which included changing products, deciding whether scrap could be repaired, and assigning employees to various tasks. The Board affirmed that finding in its Decision on Review. The only evidence of major supervisory authority was the testimony of Elvin Knight, Brown's foreman, that about a month after the election he relied on her recommendation that a temporary employee be offered a permanent position. We find this testimony insufficient to establish that Brown possessed the major supervisory authority effectively to recommend hiring or promotions. We note in this regard that the record indicates that foremen invariably conducted independent investigations before acting in those instances where they allegedly "relied" on group leaders' recommendations.

Brown's only union activity was her attendance at a union meeting on December 3, 1978—prior to the critical period. At that meeting, she spoke out on behalf of the Union.

Joan Carson: Carson was a group leader in the ballast assembly department. The Regional Director concluded that she exercised independent judgment in making job assignments and responsibly directing the work of the 20 employees on her line, and therefore she was a supervisor within the meaning of the Act. As to major supervisory authority, Carson's foreman, Ronnie Wirt, stated that he would give "total weight" to Carson's recommendation that an employee be discharged. Wirt, however, qualified this by explaining that he would investigate the situation before taking discharge action. On the other hand, Wirt testified that he would not conduct an independent investigation before giving an employee a written warning on Carson's recommendation, even though such an occasion had not arisen. He added that an oral warning was the strongest discipline that Carson could administer on her own. Subsequently, Wirt stated that he would issue a written warning on Carson's recommendation only if he had noted in his files that the employee had received a prior oral warning about the matter. Accordingly, we find that Carson's recommendations of written reprimands were adopted only after independent investigation, and therefore she did not exercise major supervisory authority.

The Union conceded that Carson attended union meetings before the critical period on December 3, 1978, and during it on February 15, 1979.[15] The parties stipulated that Carson encouraged the employees in her department to attend such meetings and that she spoke out on behalf of the Union at the two meetings. There is no evidence that Carson engaged in any other union activity.

Jo Ann Gray: Shortly before the filing of the petition on December 14, 1978, Gray was transferred from Respondent's main facility in Southaven, Mississippi, to its warehouse in Memphis, Tennessee, about 8 miles away. In a different proceeding, the Board on April 20, 1982, affirmed an Administrative Law Judge's finding that Respondent unlawfully transferred Gray to the warehouse in order to curb her union activities among employees at the larger facility.[16]

Before the transfer, Gray was the group leader in Southaven's shipping department, where she worked with one other employee and spent all of her time engaged in manual labor and related paperwork. After the transfer to the warehouse, Gray was thegroup leader over six full-time and three part-time employees. Gray's foreman told her at the beginning of each shift what work needed to be done, and then Gray assigned the work to the various warehouse employees. Gray estimated that she spent 90–95 percent of her time loading trucks and doing related paperwork, and only 5–10 percent of her day telling other employees what to do. Her uncontroverted testimony was that she had no authority to grant time off or to issue written warning notices. She testified that, in almost 4 years as a group leader, the first time she was informed she

[13] Almost all of the evidence of group leaders' union activities is the result of a stipulation entered into by the parties at the hearing.

[14] Despite Respondent's suggestion to the contrary, we are not required by the circuit court's opinion to find that all of the group leaders are supervisors. Respondent's contention and the Regional Director's statement that all the group leaders possessed "similar duties and responsibilities" do not relieve Respondent of its burden to show that any particular group leader had supervisory authority.

[15] All subsequent dates refer to 1979 unless otherwise stated.

[16] 261 NLRB 229.

had the authority to give written warnings occurred about 2 weeks after the election.

In its April 1982 decision, the Board affirmed the Administrative Law Judge's finding that Gray was not promoted to a supervisory position until April 1979, or about 2 months after the election. Gray's above-mentioned testimony in this case is not inconsistent with her testimony in the unfair labor practice proceeding which was the subject of the Board's earlier decision. Nevertheless, the testimony of her foreman in this case would tend to show that she exercised independent judgment in assigning and directing the work of Memphis warehouse employees. We find it unnecessary to resolve this conflict because, even if we accepted her foreman's testimony and found her to be a supervisor during the critical period, it is clear that at the time she was engaged in union activity Gray did not possess any of the indicia of major supervisory authority identified by the Second Circuit.

Gray was the most active group leader in support of the Union. At the January 21 union meeting, with approximately 75 employees present, Gray spoke out on job security and said she was transferred to the Memphis warehouse against her wishes. Gray added that she was all for the Union and would do everything she could to support it. At the February 11 union meeting—5 days before the election—Gray said the following to a group of about 100 employees:

> Everybody had better get out and vote for the union. They transferred me to the other warehouse because someone told them I was a strong backer for the union. They said they were training me for a foreman's job, but they were just lying to me. If you don't vote for the union, you can be done the same way I was done. I worked my but [sic] off for fourteen years and this is how they treat me. They jerk me up and move me without any explanation. The ones that don't vote for the union, don't come to me crying about your problems afterwards because I don't want to hear them. The company made a lot of promises after the last election, and they didn't keep them. So, there is no proof they will keep the promises they make to you now. If we don't get the union in, I don't want to hear any complaints from anybody. This is our opportunity to be able to stand up for ourselves and speak for ourselves.

The assembled employees applauded and cheered at the conclusion of this statement. Gray also attended a general union meeting on February 15.

In addition, Gray was one of five group leaders[17] who, along with several other employees, met with the Union's International representative a number of times. At the first of these meetings, the Union's attorney advised the group leaders that in his opinion they were not supervisors and could continue to engage in union activities. At subsequent meetings, the group leaders and employees predicted how persons on the election eligibility list would vote and volunteered to attempt to influence employees to vote for the Union. The parties stipulated that Gray wore prounion T-shirts during the critical period.

Terry Henley: No findings on Henley's supervisory status have been made to date. He had been a second-shift group leader in the uniflux department since October 1978. He independently assigned and directed the work of the eight employees who worked in his department, and he testified that he had the authority to reject employees' work and make them redo it, and that he could allow employees to leave work early.

It is clear that the strongest discipline that Henley could administer on his own was an oral warning. He stated without contradiction that, when he felt that an employee deserved more than an oral warning, his foreman, Ronnie Wirt, became involved and investigated the situation to determine whether stronger discipline was warranted. For example, the only time that Henley had recommended that an employee be disciplined, Wirt did not issue a warning notice until he had verified Henley's account of the incident with group leader Joan Carson.

Henley testified that he did not consider himself to be a supervisor until January 29, when Wirt took over the second shift and altered its operation. Before then, Henley said, his foreman did not "back up" his recommendations regarding personnel actions. Nonetheless, we find that at all material times Henley was a supervisor within the meaning of the Act in view of his assignment and direction of employees.

Henley's union activities included attending "just about every one" of the general organizational meetings conducted by the Union, asking employees to attend those meetings, "talking up and supporting" the Union, and telling employees that the Union would get them better benefits and stop favoritism by foremen. Henley, however, stated that he ceased his advocacy of the Union when he first perceived himself to be a supervisor, about 2 weeks before the election.

[17] The others were Richard Johnson, Carolyn Smith, Barry Williams, and Sammie Williams.

Barbara Jackson: Jackson is another group leader whose supervisory status was left unresolved by the Regional Director and the Board. As the group leader of about 10 employees on the second-shift assembly line, Jackson spent almost all her time engaged in manual labor and ordering parts. The employees on her line apparently did not require much supervision, but Jackson was responsible for running the line and directing the employees. Although we find that Jackson was a statutory supervisor because she exercised independent judgment in directing employees' work, Respondent has failed to sustain its burden of showing that she possessed any other supervisory authority during the critical period.

Jackson attended the Union's organizational meetings on January 21 and February 11 and 15. In addition, on one occasion, the Union's International representative took Jackson and three other employees to dinner at his expense.

Richard Johnson: There is no evidence concerning Johnson's duties or supervisory authority. Accordingly, we cannot find that he was a supervisor, and therefore his stipulated union activities—attending union meetings and consulting with union representatives—are immaterial to our decision.

Vernal Massey: Massey was a group leader in the mast arm department, which had about 10 employees. After he received the work schedule from his foreman, Ronnie Wirt, Massey assigned and directed employees in the cutting, bending, and welding of pipe. In this connection, Massey selected employees to work overtime, obtained replacements for absentees, and permitted employees to leave work early. Because of his use of independent judgment in directing employees, we find that Massey was a supervisor.

With regard to indicia of major supervisory authority, Wirt cited incidents involving employees Dacus and McMahon as examples of Massey's recommendations that employees be given discipline stronger than an oral warning. Both of these incidents show that Massey did not have the authority effectively to recommend more than an oral warning. In the first case, Massey wanted Wirt to issue a written warning to Dacus about his absenteeism. Instead, Wirt simply spoke to Dacus and encouraged him to improve his attendance. Similarly, Wirt did not follow Massey's recommendation that McMahon be fired for neglecting his work, but instead merely talked to McMahon about his deficiencies and received his promise to do better in the future. Further, testimony designed to show that Massey had the authority to adjust employees' grievances only demonstrated that Massey acted sporadically as the conduit to Wirt for employee complaints about environmental conditions in the workplace. In each cited instance, Wirt resolved the problem after undertaking an independent investigation.

The Union conceded that Massey attended one union meeting on February 11, and Massey is included among those group leaders who, the parties stipulated, went to union meetings, encouraged employees to attend, and spoke out on behalf of the Union.

George McGhee: McGhee was group leader of four employees in the drill department, which also had Ronnie Wirt as its foreman. McGhee assigned work and ordered materials pursuant to a schedule that he received each day from his superiors. In so doing, he was required to exercise independent judgment. Accordingly, we find that McGhee was a supervisor within the meaning of Section 2(11) of the Act.

When asked by Respondent's counsel to give examples of McGhee's authority to recommend discipline, Wirt cited incidents involving oral warnings to employees, which were given only after the foreman independently investigated the matter. Like Massey, McGhee could, without Wirt's prior approval, request employees to work overtime, obtain substitutes, and reject employees' work.

The parties stipulated that McGhee attended one union meeting during the critical period, but did not speak out on behalf of the Union.

John McNeely: In its Decision on Review, the Board found that McNeely was a statutory supervisor because he possessed the authority to adjust grievances, issue oral warnings, grant overtime, initial timecards, grant time off to employees within his own department, and reassign employees to different work areas as the need arose. In addition, the Board found that McNeely was required to enforce Respondent's rules regarding safety and to monitor the abuse of coffeebreaks and restroom privileges.

Respondent failed to show, however, that McNeely had the authority effectively to recommend any discipline stronger than oral reprimands. His foreman, Lee Shepherd, testified that oral warnings were not recorded, and that, if McNeely ever recommended that an employee be suspended or fired, no action would be taken until Shepherd and the personnel department made an investigation of the facts.

McNeely's only union activity during the critical period was his attendance at union organizational meetings on January 21 and February 15. The parties also stipulated that McNeely was among the group leaders who "spoke out in behalf of the union."

Jessie Merriweather: Merriweather worked in the metal finishing department with one other employee, Steve Rose. Merriweather did not receive a formal work schedule like the other group leaders, but instead dealt directly with the two departments for which he performed services. His foreman, Ronnie Wirt, estimated that Merriweather spent about 50 percent of his time in manual labor, 20 percent ordering or moving materials, and the balance communicating with production employees about their needs.

Wirt described the metal finishing operation as a simple one, which did not require Merriweather to give much direction to Rose, who was an experienced employee. Merriweather "tells Rose what to wash and when to wash it," according to Wirt. Merriweather had the authority to excuse employees from overtime, but this was routine, inasmuch as employee requests to avoid overtime seldom were denied. He also could permit Rose to leave work early. There is no evidence that Merriweather could adjust grievances; he simply brought Rose's complaints to Wirt's attention, and then Wirt took the matter to higher management for resolution.

We find that because he exercised a degree of independent judgment in assigning work to Rose, and could orally reprimand him, Merriweather was a supervisor within the meaning of the Act. He had no major supervisory authority, however, to take or effectively recommend adverse action against an employee. For example, when Merriweather told Wirt that Rose should be fired for poor attendance, Wirt investigated Rose's record and decided that the strongest discipline that was warranted was a suspension, not discharge.

The parties stipulated that Merriweather's only union activity was attending one union meeting during the critical period, at which he did not speak out on behalf of the Union.

Jeannette Millington: The Board in its Decision on Review found that Millington was a supervisor, and therefore sustained the challenge to her ballot. As the sole group leader in the quality control department, Millington spent a majority of her time making sure that the department's 18 employees were working and that their equipment was properly set up. She trained employees, corrected their work, and possessed the authority to adjust grievances, approve overtime, grant time off, reassign employees to different work areas, issue oral warnings, and initial timecards. The Board concluded that Millington exercised a certain amount of independent judgment in the performance of the above duties.

Respondent did not present any evidence demonstrating that Millington effectively could recommend written reprimands or stronger discipline. Quality Control Foreman Lyvonne Young testified that, if Millington recommended to her that an employee be written up (which had not occurred), Young would "check it out first" before following the recommendation.

Millington went to general union meetings on January 21 and February 11 and 15. At one of these meetings, with about 40 employees present, she spoke out and complained about Respondent's treatment of a relative in a job assignment.

Carolyn Smith: Like Christine Brown, Smith was a group leader of 11 employees on an assembly line in the uniflux department. The Board affirmed the Regional Director's finding that Smith was a statutory supervisor, inasmuch as she responsibly directed the work of employees. With respect to major supervisory authority, Smith stated that she believed she had the authority to recommend that an employee receive a written reprimand, and that she was sure that her foreman, Elvin Knight, would follow her recommendation. Nevertheless, she had not recommended that an employee receive a written warning, and Respondent offered no evidence that she had the authority effectively to so recommend.[18] We find that Smith had the authority to give oral reprimands, but could not issue or effectively recommend any stronger discipline.

In addition to attending two general union meetings, Smith was one of five group leaders who, along with other employees, met several times with the Union's International representative to discuss the election eligibility list. Smith, however, testified without contradiction that she never talked to employees in her department about the election.

Barry Williams and Sammie Williams: Contrary to the Regional Director, the Board on review found sufficient uncontroverted evidence to establish the supervisory status of group leaders Barry Williams and Sammie Williams. In addition to responsibly directing the work of receiving and warehouse employees, respectively, the two Williamses possessed the authority to adjust grievances, issue oral warnings, grant overtime, initial timecards, grant time off to employees within their own departments, and reassign employees to different work areas. Further, they were required to enforce Respondent's rules regarding safety and to monitor the abuse of coffeebreaks and restroom privileges.

[18] The fact that Foreman Knight may have followed Smith's recommendation that an employee *not* receive a written warning does not establish that Smith effectively could recommend such warnings.

It is clear from the testimony of both Williamses and their foreman, Lee Shepherd, that they had no authority effectively to recommend hiring, firing, layoff, recall, or discipline. Shepherd testified that, although he would give "some weight" to Sammie Williams' suggestion that an employee be disciplined, he would independently investigate the matter before implementing a written reprimand, suspension, or discharge.

Barry Williams attended two general union meetings during the critical period and met informally with union representatives several times to discuss the union sentiments of various employees. Williams volunteered to try to persuade employees to vote for the Union, and wore a prounion T-shirt to work.

Sammie Williams also attended general union meetings and the smaller meetings conducted by the Union's International representative for about a dozen group leaders and employees. There is no evidence that he engaged in any other union activity.

Discussion and Conclusions

We have found that 12 of the 15 group leaders who engaged in union activity during the critical period were supervisors, and have assumed, for purposes of this proceeding, that Jo Ann Gray also was a supervisor. All 13 of these individuals exercised independent judgment in assigning and directing work; 7 had the authority to allow employees to leave work early and to approve overtime; and 4 also could adjust grievances.[19] None of these group leaders had the authority effectively to recommend hiring, firing, promotions, or written warnings. The most they could do was orally reprimand an employee and inform a foreman that an employee had committed an infraction or needed to improve his job performance. As mentioned above, these oral warnings were not recorded.

We must determine whether the group leaders' prounion activities reasonably could have coerced employees into supporting the Union out of fear of future retaliation. The court of appeals identified the key issue as being whether a prounion group leader might be able to recommend, if not actually cause, the dismissal or other adverse treatment of an antiunion employee, even if the true motive behind the recommendation could be disguised. We conclude that there was no danger that a prounion group leader bent on retaliation could accomplish that end, since the record amply demonstrates that no hiring, firing, promotions, or written reprimands were effected with respect to employees supervised by any of these 13 group leaders without an independent investigation of the matter by Respondent's foremen and personnel office. The type of day-to-day supervisory authority possessed by these group leaders simply did not afford the opportunity for effective retaliation against antiunion employees. That a group leader may have been able to reprimand an employee orally for staying too long in the restroom or for working too slowly on the assembly line does not warrant a finding that the retaliatory potential of the group leaders was sufficent to make their involvement in the union campaign coercive to employees. Further, there is no evidence that any action was taken to make any employee fear possible retribution at a group leader's hands for failing to support the Union.[20] Accordingly, we affirm our earlier holding that the prounion statements and activities of the group leaders did not reasonably tend to coerce employees and impair the employees' freedom of choice so as to justify setting the election aside.

This result is not inconsistent with *Delchamps, Inc.*, 210 NLRB 179 (1974), and *Flint Motor Inn Company d/b/a Sheraton Motor Inn*, 194 NLRB 733 (1971), where the Board set aside elections based on supervisory involvement in union activities, even in the absence of threats to employees. In *Delchamps*, the Board found that the supervisors in question possessed the major supervisory authority, *inter alia*, to discipline employees, and effectively to recommend pay raises, transfers, promotions, and discharges, and that there was evidence that some of the supervisors actually hired and fired employees. Similarly, the supervisor whose union activities were found coercive in *Flint* was the chef, who had the authority to hire and discipline, and who supervised the entire complement of kitchen employees. None of the 13 group leaders at issue here had any of these indicia of major supervisory authority.

In sum, we hereby overrule Respondent's objections, and we reaffirm the Certification of Representative issued in Case 26–RC–5908 and our prior Order in Case 26–CA–8050.

[19] Nothing in the record indicates that the grievance adjusting authority of these group leaders placed them in a position effectively to retaliate against employees.

[20] Respondent points to Jo Ann Gray's remarks at the February 11 union meeting as an example of the way in which a prounion group leader could retaliate against an employee. At that meeting, with about 100 employees present, Gray declared: "[E]verybody had better get out and vote for the union . . . The ones that don't vote for the union, don't come to me crying about your problems afterwards because I don't want to hear them." Respondent argues that this comment shows that Gray advised employees that she would not resolve their grievances if they voted against the Union. We read her statement as simply expressing her position that she would have no sympathy for those employees in the future who complained to her about being mistreated by the Company, but who were unwilling to unionize. In any event, Respondent failed to show that Gray had any authority to adjust grievances.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board reaffirms its Decision and Order issued in this proceeding on September 26, 1980 (reported at 252 NLRB 328) and hereby orders that the Respondent, ITT Lighting Fixtures, Division of ITT Corporation, Southaven, Mississippi, its officers, agents, successors, and assigns, shall take the action set forth therein.